

1
2
3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT TACOMA

6 TIM ALAN GASS f/k/a TIM ALAN
7 WARNER,

8 Plaintiff,

9 v.

10 KELDY HENDRICKS, CATHI
11 HARRIS, PATRICIA WILLIAMS, and
12 LESLIE SZIEBERT,

13 Defendants.

No. C11-5732 RJB/KLS

ORDER DENYING MOTION FOR THE
APPOINTMENT OF COUNSEL

14 This civil rights action has been referred to United States Magistrate Judge Karen L.
15 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Before the Court is
16 Plaintiff's motion for the appointment of counsel. ECF No. 7. Having carefully reviewed
17 Plaintiff's motion and balance of the record, the Court finds, for the reasons stated below, that
18 Plaintiff's motion should be denied.

19 **DISCUSSION**

20 No constitutional right exists to appointed counsel in a § 1983 action. *Storseth v.*
21 *Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). *See also United States v. \$292,888.04 in U.S.*
22 *Currency*, 54 F.3d 564, 569 (9th Cir. 1995) (“[a]ppointment of counsel under this section is
23 discretionary, not mandatory.”) However, in “exceptional circumstances,” a district court may
24 appoint counsel for indigent civil litigants pursuant to 28 U.S.C. § 1915(e)(1) (formerly 28
25 U.S.C. § 1915(d)). *Rand v. Roland*, 113 F.3d 1520, 1525 (9th Cir. 1997), *overruled on other*
26 *grounds*, 154 F.3d 952 (9th Cir. 1998) (emphasis supplied.) To decide whether exceptional

1 circumstances exist, the court must evaluate both “the likelihood of success on the merits [and]
2 the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal
3 issues involved.” *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986) (quoting
4 *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983)). A plaintiff must plead facts that show he
5 has an insufficient grasp of his case or the legal issue involved and an inadequate ability to
6 articulate the factual basis of his claim. *Agyeman v. Corrections Corp. of America*, 390 F.3d
7 1101, 1103 (9th Cir. 2004).

9 That a *pro se* litigant may be better served with the assistance of counsel is not the test.
10 *Rand*, 113 F.3d at 1525. Moreover, the need for discovery does not necessarily qualify the issues
11 involved as “complex.” *Wilborn*, 789 F.2d at 1331. Most actions require development of further
12 facts during litigation. But, if all that was required to establish the complexity of the relevant
13 issues was a demonstration of the need for development of further facts, then practically all cases
14 would involve complex legal issues. *Id.*

16 Plaintiff filed his complaint *pro se* and has demonstrated an adequate ability to articulate
17 his claims *pro se*. This case is not complex. Plaintiff claims that Defendants have subjected
18 him to emotional and physical abuse in violation of the Eighth Amendment. ECF No. 4.

19 Plaintiff is requesting appointment of counsel because he is “special needs” and has been
20 diagnosed with “borderline intellectual functioning disorder.” He also states that he has not
21 understood any of the paperwork sent to him and had assistance in writing his letter requesting
22 the appointment of counsel. ECF No. 7. Based on the information submitted by Plaintiff,
23 however, the Court is unable to determine whether any such disabilities hinder Plaintiff’s ability
24 to adequately articulate his claims. He has set forth his claims clearly in his complaint. In
25 addition, the Court is aware that Plaintiff previously successfully participated in litigation against
26

1 the Special Commitment Center without the assistance of counsel. *See, Cappello, et al. v.*
2 *Seling*, C02-5242 RLB-KLS (ECF No. 346). If Plaintiff needs additional time to prosecute this
3 matter due to mental or physical constraints, he should provide the Court with documentation of
4 his medical conditions so that the Court may make a determination as to any additional time
5 and/or assistance that may be required in this case.

6
7 The Court finds no exceptional circumstances in this case. While Plaintiff may not have
8 vast resources or legal training, he meets the threshold for a *pro se* litigant. Moreover, Plaintiff
9 has not shown a likelihood of success on the merits.

10 Accordingly, Plaintiff's motion for the appointment of counsel (ECF No. 7) is **DENIED**.
11 The Clerk is directed to send copies of this Order to Plaintiff.

12
13 **DATED** this 18th day of October, 2011.

14
15 
16 Karen L. Strombom
17 United States Magistrate Judge
18
19
20
21
22
23
24
25
26